

In the
United States Court of Appeals
For the Seventh Circuit

No. 09-3376

ANDRE V. POWELL,

Petitioner-Appellant,

v.

BRUCE LEMMON, Superintendent,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana,
Terre Haute Division.
No. 2:08-cv-00355-LJM-JMS—**Larry J. McKinney**, *Judge*.

MOTION TO DISMISS APPEAL

FEBRUARY 12, 2010*

* This opinion was released initially in typescript form.

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RIPPLE, *Circuit Judge* (in chambers). Andre Powell brought a habeas action challenging his prison's imposition of disciplinary sanctions. He pleaded himself out of court, however, by revealing in his petition that the prison already had vacated its discipline order and had scheduled a new hearing. The district court consequently dismissed the petition as moot. Mr. Powell moved the court to reconsider; it declined to do so. He also moved for relief from judgment. The court denied this motion. Mr. Powell's appeal is timely only as to the denial of his motion for relief from judgment.

By order dated February 8, 2010, this court, agreeing with the district court, denied permission to proceed in forma pauperis. In that order, the court gave Mr. Powell 14 days to pay the required docketing fee or to withdraw his appeal.

Before me today is a motion filed by Mr. Powell on the same day as our earlier order. Since Mr. Powell is incarcerated, it no doubt left his control on an earlier date. In that motion, Mr. Powell states that the dispute is moot and asks that we dismiss his appeal for lack of jurisdiction. This motion falls within the ambit of F.R.A.P. 42(b) and an order may be entered by the Clerk dismissing the appeal. Because Mr. Powell took this action well within the time permitted for the withdrawal of his appeal without the payment of the docketing fee, he is not liable for that fee, and none should be assessed.

Accordingly the Clerk is ordered to dismiss this appeal under F.R.A.P. 42(b). In conformity with the court's earlier order, no docketing fee is to be paid.